

I HEREBY CERTIFY THAT THE WITHIN
IS A TRUE AND CORRECT COPY OF THE
ORIGINAL *Consent Order* FILED
IN THIS MATTER,

ATTORNEY FOR

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

Duplicate

IN THE MATTER OF:)
) ADMINISTRATIVE ORDER ON CONSENT
NGK Metals Corporation)
Tuckerton Road) U.S. EPA Docket No. RCRA-III-011-CA
Reading, Berks County,)
Pennsylvania)
)
PAD 04 454 0136)
)
Respondent.) Proceeding under Section
) 3008(h) of the Resource
) Conservation and Recovery
) Act, as amended, 42 U.S.C.
) § 6928(h).

I. JURISDICTION

1. This Administrative Order on Consent ("Consent Order" or "Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(h). The authority vested in the Administrator has been delegated to the Regional Administrators by EPA Delegation Nos. 8-31 and 8-32, dated March 6, 1986.

2. On January 30, 1986, the EPA granted the Commonwealth of Pennsylvania (the "State") final authorization to operate a hazardous waste program under RCRA Subtitle C, in lieu of EPA, pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. The State, however, does not have authority to enforce RCRA § 3008(h).

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3. This Consent Order is issued to NGK Metals Corporation ("Respondent"), owner/operator of the beryllium alloying company located at Tuckerton Road, Muhlenberg Township, Reading, Berks County, Pennsylvania 19560-3367 (the "facility" or the "site"). Respondent consents to and agrees not to contest EPA's jurisdiction to issue this Consent Order and to enforce its terms.

II. PARTIES BOUND

1. This Consent Order shall apply to and be binding upon EPA and Respondent and their respective agents, successors and assigns.

2. No change in ownership or corporate or partnership status relating to the facility will in any way alter Respondent's responsibility under this Consent Order.

3. Respondent shall provide a copy of this Consent Order to all major contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Consent Order within one (1) week of the effective date of this Consent Order or date of such retention. All contractors, subcontractors, laboratories and consultants retained to conduct any work pursuant to this Consent Order shall perform such work in accordance with the requirements of this Consent Order.

4. Respondent shall give notice of this Consent Order to any successor in interest prior to transfer of ownership or operation of the facility and shall notify EPA at least seven (7) calendar days after such transfer.

III. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and NGK Metals Corporation are: (1) to perform a RCRA Facility Investigation ("RFI"); and (2) to perform a Corrective Measure Study ("CMS").

IV. FINDINGS OF FACT

EPA makes the following findings of fact:

1. The Respondent is a corporation doing business in the Commonwealth of Pennsylvania and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

2. The Respondent owns and operates a facility located on Tuckerton Road, Muhlenberg Township, Reading, PA. This facility is involved with the secondary processing of various alloys containing beryllium. The EPA assigned the facility the RCRA identification number PAD 04 454 0136.

3. From October 1935 to October 1986, prior to the Respondent's involvement, various corporate entities owned and operated the facility. Respondent purchased the facility from Cabot Corporation in September 1986.

4. The facility began operating in 1935. The facility extracted beryllium from beryl ore by using the Copaux-Kawecki complex fluoride process. This process resulted in the production of waste waters containing sodium fluoride. The beryllium metal extracted by the above-mentioned process was used in alloying. This process produced a chloride waste. The alloys were treated and finished by using pickle liquors which consisted of sulfuric, nitric, and dichromate acids.

5. For many years, the United States has owned and maintained, and continues to own and maintain, a beryllium ore stockpile on an open air pad at the facility.

6. On August 15, 1980, the facility submitted a Notification of Hazardous Waste Activity ("Notification") to EPA for its hazardous waste management facility, as required by Section 3010 of RCRA, 42 U.S.C. § 6930.

7. In the August 15, 1980 Notification, the facility identified itself as handling several types of hazardous wastes at the facility, including:

- a. Waste water treatment sludges from electroplating operations (F006) (see 40 C.F.R. § 261.31); and
- b. Beryllium dust (P015) (see 40 C.F.R. § 261.33).

8. On November 18, 1980, the facility submitted a Part A Permit Application for its hazardous waste management facility, as required by Section 3005 of RCRA, 42 U.S.C. § 6925.

9. In the November 18, 1980 Part A Permit Application, the facility stated that it was engaged in the treatment and storage of hazardous waste at the facility by means of the following processes:

- a. containers, used for storage of spent halogenated solvents used in degreasing (F001)(see 40 C.F.R. § 261.31);
- b. containers, used for storage of beryllium dust (P015) (see 40 C.F.R. § 261.33);
- c. tanks, used for storage of solid waste which exhibits the characteristic of corrosivity (D002)(see 40 C.F.R. § 261.22);
- d. tanks, used for storage and treatment of waste water sludges from electroplating operations (F006)(see 40 C.F.R. § 261.31); and

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- e. tanks, used for treatment of spent cyanide plating bath solutions from electroplating operations (F007)(see 40 C.F.R. § 261.31), quenching waste water treatment sludges from metal heat treating operations where cyanides are used in the process (F012)(see 40 C.F.R. § 261.31), and sodium cyanide (P106)(see 40 C.F.R. § 261.33).

10. The facility operated as a hazardous waste management facility on or before November 19, 1980 and, consequently, the facility is an "existing hazardous waste management facility," as defined in 40 C.F.R. § 260.10.

11. The facility qualified for "interim status," pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e). EPA acknowledged the facility's interim status in an August 2, 1981 letter to Cabot Corporation.

12. The facility is subject to the interim status requirements contained in Sections 3004 and 3005 of RCRA, 42 U.S.C. §§ 6924 and 6925.

13. The facility submitted a Part B Permit Application to the Pennsylvania Department of Environmental Resources ("PADER") on October 27, 1982 and to EPA on December 24, 1984. The Part B Permit Application addressed several units at the facility, including the PADER permitted residual waste landfill. The facility, however, notified both EPA and PADER on April 3, 1985 that it wished to withdraw its Part B Permit Application.

14. On March 8, 1985 EPA sent a letter to the facility requesting information regarding the solid waste management units ("SWMUs") at the facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

15. The facility submitted a letter to EPA on May 7, 1985 which identified/discussed the SWMUs at the facility. These SWMUs are shown in Attachment "C". The SWMUs are as follows:

- a. Unlined sludge settling lagoon ("pond #1") -- The lagoon was in service from 1952 until the early 1960's. Sludges from lime treatment of fluoride wastes, spent acids, and acid rinses were placed into the lagoon where the sludge would settle. In 1969, the facility constructed a waste water treatment plant to handle these sludges.
- b. Unlined lagoon ("pond #2") -- The lagoon was in service from 1952 until the early 1960's and received the decant liquid from pond #1.
- c. Unlined lagoon ("pond #3") -- This lagoon was used to collect storm water runoff from the surrounding area.

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- d. An unlined lagoon on the southeastern property corner which received treated waste water from the waste water treatment plant.
- e. Unlined lagoon ("pond #6") -- This lagoon was used for the disposal of limed sludge dredged from pond #1.
- f. Two red mud filter cake disposal areas -- This material was derived from gangue material generated by the beryl ore processing plant at the facility, which opened in the mid-1940's and closed in the early 1960's.

16. The facility submitted a revised Part A Permit Application to EPA on November 8, 1985 in order to change its status from that of a hazardous waste treatment, storage, or disposal ("TSD") facility to that of a generator of hazardous waste.

17. The Respondent submitted a revised Notification to EPA on September 24, 1986 with regard to a change of ownership of the facility. In the revised Notification, NGK Metals Corporation notified EPA it had become the owner/operator of the facility.

18. On January 26, 1987 PADER terminated the facility's interim status as a hazardous waste container storage, tank storage, and landfill facility. The container storage and tank storage areas have received final closure certification. The landfill never received hazardous waste and it is operating under a State residual waste permit.

19. The Respondent's facility currently consists of the following hazardous waste management units (see Attachment "C"):

- a. spent acid storage tanks for less than 90 days;
- b. container storage for spent 1,1,1-trichloroethane and beryllium aluminum dross for less than 90 days; and
- c. chemical/physical waste water treatment tanks (permit by rule status granted by PADER on September 7, 1984).

20. Ground water monitoring wells were installed and sampled at the residual waste landfill in 1979 (see Attachment "C" for well locations). The sampling data, which indicate the presence of beryllium and chromium in ground water at the facility, are contained in the administrative record.

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21. Recent sampling data (1986 and 1987) from the facility ground water monitoring wells, which indicate that concentrations of beryllium and chromium in ground water at the facility have not changed appreciably from 1979 to 1987, are contained in the administrative record.

22. The sampling data referred to in paragraphs 20 and 21 demonstrate that elevated levels of beryllium and chromium exist in ground water at the facility.

23. EPA's data concerning the health effects of beryllium and chromium are contained in the administrative record.

24. The substances referred to in paragraph 23 are hazardous wastes and/or hazardous constituents, as defined by Section 1004(5) of RCRA, 42 U.S.C. § 6903(5). These are also hazardous wastes or hazardous constituents within the meaning of Section 3001 of RCRA, 42 U.S.C. § 6921, and 40 C.F.R. Part 261.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set out above, and after consideration of the administrative record, the Regional Administrator, EPA Region III, has made the following conclusions of law and determinations:

1. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15);

2. Respondent is the owner or operator of a facility that has operated or is operating pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).

3. Certain wastes and constituents thereof found at the facility are hazardous wastes or hazardous constituents thereof as defined by Section 1004(5) of RCRA, 42 U.S.C. § 6903(5). These are also hazardous wastes or hazardous constituents within the meaning of Section 3001 of RCRA, 42 U.S.C. § 6921, and 40 C.F.R. Part 261.

4. There is or has been a release of hazardous wastes and/or hazardous constituents into the environment from Respondent's facility.

5. The actions required by this Consent Order are necessary to protect human health or the environment.

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VI. WORK TO BE PERFORMED

1. EPA acknowledges that the Respondent may have completed some of the tasks required by this Consent Order and that the EPA and Respondent may have available some of the information and data required by this Consent Order.

2. Pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), Respondent agrees to and is hereby ordered to undertake the performance of a RCRA Facility Investigation and Corrective Measures Study in the manner and by the dates specified herein. All work undertaken pursuant to this Consent Order shall be performed in a manner consistent with: the Scope of Work for a RCRA Facility Investigation appended as Attachment A to this Order; the Scope of Work for a Corrective Measures Study, which is appended as Attachment B to this Order; RCRA and its implementing regulations; and applicable EPA guidance documents.

3. Respondent's consent to the entry of this Consent Order shall not constitute or be deemed an admission by Respondent of any fact, conclusion of law or determination made by EPA, or an admission of any fault or liability of the Respondent, or an admission of any violation of any laws, rules or regulations by Respondent, or an admission that the circumstances to be investigated hereunder represent any threat to human health or the environment or to any private or public interests. This Consent Order shall not be admissible as evidence in any court or administrative proceeding, except as evidence for purposes of enforcing this Consent Order.

RCRA FACILITY INVESTIGATION (RFI)

1. Within ninety (90) calendar days of the effective date of this Consent Order, Respondent shall submit to EPA a Workplan for a RCRA Facility Investigation ("RFI Workplan"). The RFI Workplan is subject to approval by EPA and shall be developed in accordance with RCRA, its implementing regulations and the Interim Final Corrective Action Plan (OSWER Directive #9902, dated November 14, 1986). See Attachment A. The RFI shall be performed in accordance with the approved RFI Workplan.

2. The RFI Workplan shall be designed to define the presence, magnitude, extent, direction, and rate of movement of any hazardous wastes or hazardous constituents originating at the facility. The RFI Workplan shall document the procedures the Respondent shall use to conduct those investigations necessary to: (1) characterize the potential pathways of contaminant migration; (2) characterize the source(s) of contamination; (3) define the degree and extent of contamination; (4) identify actual or potential receptors; and (5) support the development of alternatives from which a corrective measure may be selected by EPA. A specific schedule for implementation of all activities shall be included in the RFI Workplan.

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3. In accordance with the provisions contained in Attachment A herein, the RFI Workplan shall include: (1) a Project Management Plan; (2) a Data Collection Quality Assurance Plan; (3) a Data Management Plan; and (4) a Health and Safety Plan.

4. EPA will review Respondent's RFI Workplan and, within sixty (60) calendar days of receipt of such document, will notify Respondent in writing of EPA's approval or disapproval of the RFI Workplan or any part thereof. In the event of EPA's disapproval, EPA shall specify in writing any deficiencies in the RFI Workplan. Such disapproval shall not be subject to the dispute resolution procedures of Section XV, below. In the event that EPA requires more than sixty calendar days to complete its review of the RFI Workplan, EPA will notify Respondent in writing on or before the expiration of the sixty day review period, stating the reason(s) for the delay and the anticipated date for the completion of EPA's review. EPA's inability to complete its review within the sixty day period, however, shall not be construed as either a waiver of EPA review or an approval of Respondent's RFI Workplan.

5. Within thirty (30) calendar days of receipt of EPA's comments on the RFI Workplan, Respondent shall submit to EPA for approval a revised RFI Workplan which responds to and/or remedies any deficiencies identified by EPA. In the event that EPA disapproves of the revised RFI Workplan, Respondent may invoke the dispute resolution procedures of Section XV, below. Moreover, in the event that EPA disapproves the revised RFI Workplan, EPA reserves the right to prepare and implement the RFI Workplan in lieu of Respondent and to seek to recover from Respondent the costs thereof.

6. Upon receipt of EPA approval of the RFI Workplan, Respondent shall implement the RFI Workplan in accordance with the schedule contained therein.

CORRECTIVE MEASURES STUDY (CMS)

7. Within ninety (90) calendar days of receipt of EPA approval of the RCRA Facility Investigation final report, the Respondent shall submit to EPA for approval a Draft Corrective Measure Study in accordance with the CMS Scope of Work which is located in Attachment B.

8. EPA will review Respondent's Draft Corrective Measure Study and, within sixty (60) calendar days of receipt of such document, will notify Respondent in writing of EPA's approval or disapproval of such document or any part thereof. In the event of EPA's disapproval, EPA shall specify in writing any deficiencies in the Draft CMS Report. Such disapproval shall not be subject to the dispute resolution procedures of Section XV, below. In the event that EPA requires more than sixty calendar days to complete its review of the Draft CMS

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Report, EPA will notify Respondent in writing on or before the expiration of the sixty day review period, stating the reason(s) for the delay and the anticipated date for the completion of EPA's review. EPA's inability to complete its review within the sixty day period, however, shall not be construed as either a waiver of EPA review or an approval of Respondent's Draft CMS Report.

9. Within thirty (30) calendar days of receipt of EPA's comments on the Draft CMS Report, Respondent shall submit to EPA for approval a Final CMS Report which responds to and/or remedies any deficiencies identified by EPA. In the event that EPA disapproves of the Final CMS Report, Respondent may invoke the dispute resolution procedures of Section XV, below. Moreover, in the event that EPA disapproves the Final CMS Report, EPA reserves the right to prepare the Final CMS Report in lieu of Respondent and to seek to recover from Respondent the costs thereof.

PUBLIC COMMENT AND PARTICIPATION

10. Upon approval by EPA of a Corrective Measure Study Final Report, EPA shall make both the RCRA Facility Investigation Final Report (or summary of report) and the Corrective Measure Study Final Report (or summary of report) and a summary of EPA's proposed corrective measure and EPA's justification for proposing selection of that corrective measure available to the public for review and comment for at least twenty-one (21) calendar days.

11. Following the public review and comment period, EPA shall notify Respondent of the corrective measure selected by EPA. If the corrective measure recommended in the Corrective Measure Study Final Report is not the corrective measure selected by EPA after consideration of public comments, EPA shall inform Respondent in writing of the reasons for such decision, and the Respondent shall modify the RFI/CMS Final Reports pursuant to EPA direction by attaching or incorporating EPA's decision. Such attachment or incorporation of EPA's decision shall not necessarily reflect a modification by Respondent of its initial recommendation.

CORRECTIVE MEASURES IMPLEMENTATION (CMI)

12. If Respondent has complied with the terms of this Consent Order, EPA shall provide a sixty (60) calendar day period for negotiation of an administrative order on consent (or a judicial consent decree) for implementation of the selected corrective measure. The sixty (60) calendar day negotiation period shall begin on the date Respondent receives EPA's notification of the selected final corrective measure.

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SUBMISSIONS/EPA APPROVAL/ADDITIONAL WORK

13. After approval or modification by EPA of any Workplan(s) or preliminary and final report(s), and within the associated timeframes, Respondent shall commence work and implement the tasks required by the Workplan(s) submitted pursuant to the Scope(s) of Work contained in this Consent Order, in accordance with the standards, specifications and schedule stated in the Workplan(s) as approved or modified by EPA.

14. Beginning with the second month following the effective date of this Consent Order and continuing throughout the period this Order is effective, Respondent shall provide EPA with bimonthly (every two months) progress reports which shall be submitted by the twentieth day of the following month. The progress reports shall address the elements listed in the Scopes of Work appended hereto as Attachments A and B, specifically Tasks V.B and IX.A therein.

15. Three copies of all documents, including Workplan(s), preliminary and final reports, progress reports, and other correspondence required to be submitted pursuant to this Consent Order shall be hand delivered or sent by certified mail, return receipt requested, to the Project Coordinator designated pursuant to Section XII, below, "Project Coordinator."

16. All work performed pursuant to this Consent Order shall be under the direction and supervision of a professional engineer or geologist with expertise in hazardous waste site investigation. On or before the effective date of this Consent Order, Respondent shall notify EPA, in writing, of the name, title, and qualifications of the engineer or geologist, and of any major contractors to be used in carrying out the terms of this Consent Order. Thereafter, Respondent shall notify EPA, in writing and within seven (7) calendar days after selection, the name, title and qualifications of any major subcontractors which Respondent contemplates retaining for the purpose of carrying out the terms of this Consent Order. Respondent has, and may exercise, the right to discharge any consultant for the purpose of performing any work pursuant to this Consent Order. Respondent shall notify EPA, in writing and within seven (7) calendar days after selection, the name, title and qualifications of any successor which Respondent contemplates retaining for the purpose of carrying out the terms of this Consent Order. EPA reserves its right to disapprove Respondent's choice of any engineer, geologist, contractor, subcontractor or successor.

17. EPA may determine that certain tasks and deliverables, including investigatory work or engineering evaluation, require additional work. These tasks and deliverables may or may not have been included in the RFI Workplan. EPA shall request, in writing, that Respondent perform the additional work in this situation and shall specify the basis and reasons for EPA's determination that the additional work is necessary.

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Within twenty-one (21) calendar days after the receipt of such request, Respondent shall have the opportunity to meet with EPA to discuss the additional work EPA has requested. In the event that Respondent agrees to perform the additional work, such work shall be performed in a manner consistent with this Consent Order. EPA, however, reserves the right to order the Respondent to perform such additional work; to perform such additional work itself and to seek to recover from Respondent all costs of performing such additional work; and to disapprove of the RFI Workplan and/or the CMS Report in the event that Respondent does not perform such additional work.

VII. QUALITY ASSURANCE

Throughout all sample collections and analysis activities, Respondent shall use EPA-approved quality assurance, quality control, and chain-of-custody procedures, as specified in the approved Workplan(s) and Scope(s) of Work. In addition, Respondent shall:

1. Assure EPA that all laboratory analyses shall be performed according to the EPA methods included in "Test Methods for Evaluating Solid Waste" (SW-846, November 1986) or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall submit all protocols to be used for analyses to EPA for approval at least thirty (30) calendar days prior to the commencement of analyses.

2. Assure EPA that all laboratory analyses shall be conducted by laboratories which participate in a quality assurance/quality control program equivalent to that which is followed by EPA. As part of such a program, and upon request by EPA, such laboratories shall perform analyses of samples provided by EPA to demonstrate the quality of the analytical data.

VIII. PUBLIC REVIEW OF ADMINISTRATIVE RECORD

The Administrative Record supporting the issuance of this Consent Order will be available for public review on Mondays through Fridays, from 9:00 a.m. to 5:00 p.m. by contacting Thomas J. Buntin at:

U.S. Environmental Protection Agency
841 Chestnut Building
Philadelphia, Pennsylvania 19107
Telephone # 215-597-2745

IX. ON SITE AND OFF SITE ACCESS

1. EPA and/or its authorized representatives shall have the authority to enter and freely move about all areas of investigation at the facility during the effective period of this Consent Order for the purposes of, inter alia: inspecting records, operating logs, and contracts related to implementing

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this Consent Order at the facility; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests, sampling or monitoring in furtherance of the purposes of this Consent Order as EPA or its Project Coordinator deem necessary; and verifying the reports and data submitted to EPA by the Respondent. In order to accomplish such purposes, EPA may use a camera, sound recording, or other documentary type of equipment. EPA will furnish Respondent with a copy of any resulting photographs, videotapes, audio tapes or other types of documentation within a reasonable timeframe after any documentary event. The Respondent also shall permit such persons to inspect and copy, during normal business hours, all records, files, photographs, documents, and other writings, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Order. While on Respondent's property, EPA and Respondent, and their respective agents, employees and representatives, shall comply with all approved health and safety plans, and Respondent's security procedures.

2. To the extent that work required by this Consent Order, or by any approved Scope(s) of Work or Work Plan prepared pursuant hereto must be done on property not owned or controlled by Respondent, the Respondent shall use its best efforts to obtain site access agreements from the present owner(s) of such property within fourteen (14) calendar days of receipt of EPA approval of any Scope of Work or Work Plan pursuant to this Order which requires work on property which is not owned or controlled by Respondent. Best efforts, as used in this paragraph, shall include, at a minimum, but shall not be limited to, a certified letter from Respondent to the present owner(s) of such property requesting access agreements to permit Respondent and EPA and its authorized representatives access to such property. In the event that agreements for access are not obtained within twenty-one (21) calendar days after receipt of EPA approval of any Scope of Work or Work Plan pursuant to this Order which requires work on property which is not owned or controlled by Respondent, the Respondent shall notify EPA, in writing, within seven (7) calendar days regarding both the efforts undertaken to obtain access and the failure to obtain such agreements. EPA, at its discretion, may undertake to arrange for access so that Respondent and its contractors can perform the required work. If access cannot be obtained, Respondent may modify the approved Scope of Work and/or Work Plan, with EPA's approval, to take into account such lack of access. Any such modification shall be accomplished pursuant to the procedures set forth in Section XXI, below, "SUBSEQUENT MODIFICATION."

3. In seeking access to property not owned or controlled by Respondent, EPA shall not require Respondent to waive any of its rights not otherwise waived in this Consent Order or release other property owners for any potential liability which they may have.

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4. Nothing in this section limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including, but not limited to, RCRA and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("CERCLA").

X. SAMPLING AND DATA/DOCUMENT AVAILABILITY

1. The Respondent shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of the Respondent, in accordance with the requirements of this Consent Order.

2. Respondent shall notify EPA, to the maximum extent practicable, at least fourteen (14) calendar days before engaging in any field activities, such as well drilling, installation of wells, or sampling. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split or duplicate samples of all samples collected by Respondent pursuant to this Consent Order. Similarly, at the request of Respondent, EPA shall allow Respondent or its authorized representatives to take split or duplicate samples of all samples collected by EPA under this Consent Order. EPA will notify Respondent, to the maximum extent practicable, at least fourteen (14) calendar days before conducting any sampling under this Consent Order.

3. Respondent may assert a claim of business confidentiality covering part or all of the information or documentation requested by or provided under this Consent Order in the manner described in 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated by Respondent in accordance with 40 C.F.R. § 2.204(e)(4) at the time the assertion is made. Engineering, sampling, monitoring or analytical data shall not be claimed as confidential by Respondent. Information subject to such a claim will be handled in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of confidentiality accompanies the information or documentation when it is submitted or made available to EPA, it may be made available to the public by EPA without further notice to the Respondent.

4. Nothing in this Consent Order shall constitute or be deemed a waiver of any attorney-client or attorney work-product privileges of the Respondent to the extent that such privileges exist and would prevent the United States or EPA from obtaining the information in a federal court proceeding to enforce this Consent Order. Engineering, sampling, monitoring or analytical data shall not be withheld as being subject to these privileges.

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XI. RECORD PRESERVATION

Respondent agrees that it shall preserve, during the pendency of this Consent Order and for a minimum of six (6) calendar years after its termination, all data, records and documents in its possession or in the possession of its divisions which relate in any way to this Consent Order or to hazardous waste management and/or disposal at the facility. After six (6) calendar years, Respondent shall notify EPA thirty (30) calendar days before the destruction of any such records and, upon request by EPA, Respondent shall provide EPA with the opportunity to take possession of any such records which are not privileged, as discussed in Section X, above.

XII. PROJECT COORDINATOR

1. On or before the effective date of this Consent Order, as described in Section XXIV, below, "EFFECTIVE DATE," EPA and Respondent shall each designate a Project Coordinator. Respondent shall notify EPA, in writing, of the Project Coordinator it has selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. The EPA Project Coordinator will be EPA's primary designated representative at the facility. All documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators. To the maximum extent possible, all oral communications between Respondent and EPA shall be directed through the Project Coordinators or their designees.

2. The parties agree to provide at least seven (7) calendar days written notice prior to changing Project Coordinators.

3. If EPA determines that activities in compliance or noncompliance with this Consent Order have caused or may cause a release or threatened release of hazardous wastes, hazardous constituents, pollutants or contaminants, which threaten or may pose a threat to the public health or to the environment, EPA may order Respondent to stop further implementation of this Consent Order for such period of time as may be needed to abate any such release or threatened release and/or to undertake any action which EPA determines is necessary to abate such release or threatened release. Within seven (7) calendar days after any such order, EPA shall provide Respondent with a written statement describing the specific activities halted or to be halted and the reasons therefor.

4. The absence of the EPA Project Coordinator from the facility shall not be cause for the stoppage of work.

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XIII. NOTIFICATION

Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices or other submissions relating to or required under this Consent Order shall be in writing and shall be sent to:

1. Three copies of all documents to be submitted to the EPA shall be sent to:

Mr. Thomas Buntin, Hydrogeologist
PA RCRA Enforcement Section (3HW11)
U.S. Environmental Protection Agency
841 Chestnut Building
Philadelphia, PA 19107

2. Documents to be submitted to the Respondent shall be sent to:

Mr. David W. Wolfe, P.E.
Manager, Industrial Hygiene
and Regulatory Compliance
P.O. Box 13367
Reading, PA 19612

XIV. DELAY IN PERFORMANCE/STIPULATED PENALTIES

1. Unless there has been a written modification of a compliance date by EPA, or excusable delay, as defined in Section XVI, below, "FORCE MAJEURE and EXCUSABLE DELAY," in the event Respondent fails to meet any requirement set forth in this Consent Order, Respondent shall pay stipulated penalties, as set forth below. Compliance by Respondent shall include commencement or completion of an activity under this Consent Order or a plan approved under this Consent Order or any matter under this Consent Order in an acceptable manner and within the specified time schedules in and approved under this Consent Order. All "minor violations" shall be payable as set forth in paragraph 11(a) of this Section XIV. "Minor violations" shall be defined as:

- (a) Failure to submit a bimonthly progress report or sampling data by the specified due date;
- (b) Failure to notify EPA of a change in the designated Project Coordinator, as set forth in Section XII(2), above; and
- (c) Failure to give timely notice of any field activities, pursuant to Section X(2), above.

2. All "major violations" shall be payable as set forth in paragraph 11(b) of this Section XIV. "Major violations" shall be defined as:

- (a) Failure to submit the RFI Workplan by the specified due date;
- (b) Failure to submit the draft and final RFI Reports by the specified due dates; and
- (c) Failure to submit the draft and final CMS Reports by the specified due dates.

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3. As a part of the RFI Workplan, Respondent must submit a schedule for undertaking field activities (e.g., installation of wells and sampling). These "internal schedules" shall indicate specific dates for the commencement and completion of work to be undertaken in accordance with the final RFI Workplan ("interim milestones"). Should Respondent fail to meet an interim milestone, as indicated in the final RFI Workplan, but succeed in meeting the scheduled date for submission of a "major deliverable" (draft and final RFI and CMS Reports), EPA will waive any stipulated penalties which accrue as a result of Respondent's failure to meet interim milestones. However, should Respondent fail to meet an interim milestone and, as a result, fail to timely submit a major deliverable, Respondent shall not only be liable for stipulated penalties for the major violation, but shall also remain liable for stipulated penalties arising from Respondent's failure to meet the interim milestone. Specified penalties for failure to meet interim milestones shall be payable as set forth in paragraph 11(c) of this Section XIV.

4. If Respondent fails to abide by the record preservation requirements set forth in Section XI, above, Respondent shall be liable for a stipulated penalty of \$1000 per document destroyed. If Respondent knowingly and/or willfully destroys records pursuant to this Consent Order, Respondent may be subject to criminal prosecution.

5. All penalties shall begin to accrue on the day after complete performance is due or a violation occurs, and shall continue to accrue through the final day or correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate and distinct violations of this Consent Order.

6. Following the EPA's determination that Respondent has failed to comply with any of the requirements of this Consent Order, EPA shall give Respondent written notification of same, describing the noncompliance. Said notice shall also indicate the amount of penalties due.

7. All penalties owed to EPA under this Section XIV shall be due within thirty (30) calendar days of receipt of the notification of noncompliance, unless Respondent invokes the dispute resolution procedures under Section XV, below. Interest shall begin to accrue on the unpaid balance at the end of the 30 day period at the prevailing Treasury rate. Penalties shall accrue from the date of violation regardless of whether EPA has notified Respondent of a violation. All penalties shall be made

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by certified or cashier's check payable to the Treasurer of the United States of America and shall be remitted to:

U.S. EPA -- Regional Hearing Clerk
P. O. Box 360515M
Pittsburgh, PA 15251

All payments shall reference the name of the Facility, the Respondent's name and address, and the EPA docket number of this action. Copies of the transmittal of payment shall be sent simultaneously to the EPA Project Coordinator and the Regional Hearing Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA, 19107.

8. Respondent may dispute the EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XV, below. To the extent that Respondent does not prevail upon resolution of the dispute, Respondent shall remit to EPA any outstanding penalty payment, including any accrued interest, in the manner described in paragraph 4 of this Section XIV. To the extent Respondent prevails upon resolution of the dispute no penalties shall be payable for those penalties which were specifically resolved.

9. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Respondent's obligation to comply with requirements of this Consent Order.

10. If Respondent fails to pay stipulated penalties, the EPA may institute proceedings to collect the penalties. However, nothing in this section shall be construed as prohibiting, altering, or in any way limiting the ability of the EPA to seek any other remedies or sanctions which may be available to EPA by virtue of Respondent's failure to comply with any of the requirements of this Consent Order or of the statutes and regulations upon which it is based. However, EPA agrees not to pursue statutory penalties for any violation of the terms of this Consent Order which subjects Respondent to stipulated penalties and which violation continues for less than thirty (30) calendar days. In the event that EPA seeks to impose statutory penalties for violations which concurrently subject Respondent to stipulated penalties pursuant to this Section XIV, Respondent shall be entitled to an offset to the total amount of statutory penalties assessed by the total amount of stipulated penalties collected for such violations.

11(a) The following per diem stipulated penalties shall be payable per violation per day to EPA for any minor violation identified in paragraph 1 of this Section XIV:

<u>Amount/Day</u>	<u>Period of Noncompliance</u>
\$500	Day 1-7
\$1,000	Beyond Day 7

(b) The following per diem stipulated penalties shall be payable per violation per day to EPA for any major violation

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identified in paragraph 2 of this Section XIV:

<u>Amount/Day</u>	<u>Period of Noncompliance</u>
\$1,000	Day 1-3
\$3,000	Day 4-7
\$5,000	Beyond Day 7

(c) The following per diem stipulated penalties shall be payable per violation per day to EPA for any failure to meet interim milestones as described in paragraph 3 of this Section XIV:

<u>Amount/Day</u>	<u>Period of Noncompliance</u>
\$750	Day 1-7
\$1500	Beyond Day 7

XV. DISPUTE RESOLUTION

1. If Respondent disagrees, in whole or in part, with any EPA disapproval or modification or other decision or directive made by EPA pursuant to this Consent Order, Respondent shall notify EPA in writing of its objections, and the basis therefor, within fourteen (14) calendar days of receipt of EPA's disapproval, decision or directive. Said notice shall set forth the specific points of the dispute, the position Respondent is maintaining should be adopted as consistent with the requirements of this Consent Order, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination. EPA and Respondent shall have an additional fourteen (14) calendar days from the receipt by EPA of the notification of objection, during which time representatives of EPA and Respondent may confer in person or by telephone in an attempt to resolve any disagreement. If an agreement is reached, the resolution shall be written and signed by representatives of each party. In the event that resolution is not reached within this fourteen day period, EPA shall provide to Respondent its decision on the pending dispute. Thereafter, Respondent and EPA may pursue whatever remedies they may have under law.

2. The existence of a dispute, as defined in this Section XV, and EPA's consideration of matters placed into dispute shall not excuse, toll or suspend any compliance obligation or deadline required pursuant to this Consent Order during the pendency of the dispute resolution process.

3. Notwithstanding any other provisions of this Consent Order, no action or decision by EPA, including, but without limitation to, decisions of the Regional Administrator, Region III, pursuant to this Consent Order, shall constitute final agency action giving rise to any rights to judicial review prior to EPA's initiation of judicial action to compel Respondent's compliance with the mandate(s) of this Consent Order.

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XVI. FORCE MAJEURE AND EXCUSABLE DELAY

1. Respondent shall perform the requirements of this Consent Order within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure. Respondent shall have the burden of proving such a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondent, which cannot be overcome by due diligence and which delays or prevents performance by a date required by this Consent Order. Such events do not include increased costs of performance or changed economic circumstances.

2. Respondent shall notify EPA, in writing, within seven (7) calendar days after it becomes aware of events which Respondent claims constitute a force majeure. Such notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this Section XVI shall constitute a waiver of Respondent's right to assert a force majeure claim with respect to such event.

3. If EPA determines that the delay has been or will be caused by circumstances not reasonably foreseeable and beyond the control of Respondent, which cannot be overcome by due diligence, the time for performance for that element of the relevant Scope(s) of Work or Work Plan may be extended, upon EPA approval, for a period equal to the delay resulting from such circumstances. This shall be accomplished through an amendment to this Consent Order pursuant to Section XXI, below, "SUBSEQUENT MODIFICATION." Such an extension does not alter the schedule for performance or completion of other tasks required by any Scope of Work or Work Plan, unless these tasks are also specifically altered by amendment of this Consent Order. In the event that EPA and Respondent cannot agree that any delay or failure has been or will be caused by circumstances not reasonably foreseeable and beyond the control of Respondent, which cannot be overcome by due diligence, or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with Section XV, above, "DISPUTE RESOLUTION."

XVII. RESERVATION OF RIGHTS

1. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Respondent pursuant to this Order and to request that Respondent perform tasks in addition to those stated in the Work Plan and Scope(s) of Work.

2. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Consent Order, including, without limitation, the assessment of penalties

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under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2). This Consent Order shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory or common law enforcement authority of the United States. In the event that EPA seeks to impose statutory penalties for violations which concurrently subject Respondent to stipulated penalties pursuant to Section XIV, above, Respondent shall be entitled to an offset to the total amount of statutory penalties assessed by the total amount of stipulated penalties collected for such violations.

3. EPA reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and response/corrective actions as it deems necessary to protect public health and the environment, provided, however, that EPA first gives Respondent notice of EPA's intentions to perform such work and allows Respondent a reasonable opportunity to undertake such work itself. If EPA performs any work which Respondent otherwise would have been required to perform under this Consent Order, Respondent shall be released from undertaking further action to complete such work. Respondent shall not be released, however, from any other obligations under this Consent Order, including specifically the obligation to pay any stipulated penalties. EPA may exercise its authority under Section 7003 of RCRA, 42 U.S.C. § 6973, and CERCLA to undertake removal actions or remedial actions at any time. In any event, EPA reserves its right to seek reimbursement from Respondent for such additional costs incurred by the United States. Notwithstanding compliance with the terms of this Consent Order, Respondent is not released from liability, if any, for the costs of any response actions taken by EPA.

4. Except as expressly waived herein, Respondent reserves all rights and defenses that it may have, whether legal or equitable, with respect to any claims asserted against it under statutory, regulatory or common law.

XVIII. OTHER CLAIMS

Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity EPA or Respondent may assert against any person, firm, partnership, or corporation not bound by this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the facility. Nothing in this Consent Order shall affect any right, claim, interest, or cause of action of any party hereto with respect to third parties.

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XIX. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Respondent or its representatives shall timely and completely apply for all permits and approvals necessary under such laws and regulations. Respondent's failure to obtain all necessary permits and approvals, despite timely and complete application, shall not be construed as a waiver of Respondent's obligation to obtain such permits and approvals prior to the commencement of particular field activities.

XX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondent agrees to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent or its agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Consent Order. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondent or the United States under their various contracts.

XXI. SUBSEQUENT MODIFICATION

1. This Consent Order may only be amended by mutual agreement of EPA and Respondent. Such amendments shall be in writing, shall be signed by both parties, shall have as their effective date the date on which they are signed by EPA, and shall be incorporated into this Consent Order.

2. The RFI Workplan required by this Consent Order is, upon written approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved document shall be considered a violation of this Consent Order and shall subject Respondent to the stipulated penalty provisions included in Section XIV, above, "DELAY IN PERFORMANCE/STIPULATED PENALTIES."

3. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as relieving Respondent of its obligation to obtain written approval, if and when required by this Consent Order.

XXII. SEVERABILITY

If any provision or authority of this Consent Order or the application of this Consent Order to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of this Consent Order shall not be affected thereby and shall remain in full force.

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XXIII. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this Consent Order, including any additional tasks, have been satisfactorily completed. Such notice shall not be unreasonably delayed or withheld by EPA. This notice shall not, however, terminate Respondent's obligation to comply with Sections XI ("RECORD PRESERVATION"), XVII ("RESERVATION OF RIGHTS"), and XIX ("OTHER APPLICABLE LAWS").

XXIV. EFFECTIVE DATE

The effective date of this Consent Order shall be the date on which it is signed by EPA. Because this Consent Order was entered with the consent of both parties, Respondent waives its right to request a public hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b).

IT IS SO AGREED AND ORDERED:

DATE: August 15, 1988

BY:

Yasuhito Niwa
NGK Metals Corporation
(Name) Yasuhito Niwa
(Title) Vice President

DATE:

8/27/88

BY:

James M. Self
JAMES M. SELF
REGIONAL ADMINISTRATOR
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION III

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